

DEPARTMENT OF HEALTH AND HUMAN SERVICES
Public Health Service
Indian Health Service
Rockville, Maryland 20857

INDIAN HEALTH SERVICE CIRCULAR NO. 90-5

BLOOD ALCOHOL TESTING REQUESTED
BY LAW ENFORCEMENT OFFICIALS

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1. POLICY

- A. A blood specimen for the determination of its alcohol level may be drawn at the direction of an Indian Health Service (IHS) physician upon the request of law enforcement officers with or without consent of the individual(s) involved if one of the following conditions exist:
- (1) It is permitted by appropriate local, tribal, State (statutes in certain States provide that if a suspect expressly refuses consent to blood alcohol testing, that the test is not to be performed), or Federal laws, and there is a written service unit policy which permits the drawing of blood samples for the determination of its alcohol level. Such a policy will be developed when it has been determined after consultation with the tribe(s) that a meaningful health/social/law enforcement program exists aimed at the protection of the health of the community and/or the identification, treatment, and rehabilitation of individuals with potential alcohol problems and that a determination of blood alcohol level would contribute to the effective operation of the program and/or treatment of the patient. Formal agreements between the tribe(s) and IHS are not required. Within tribal jurisdictions, tribal codes should address the interpretation of blood alcohol levels and reporting court rulings, - if appropriate, to State drivers' license agencies, to have a meaningful health/social/law enforcement program. The final decision on such a policy rests with the Area Director; IHS.
 - (2) There is a formal agreement under the Economy Act, 31 U.S.C. 686(2) for the IHS to perform this function for another Federal agency (e.g., Bureau of Indian Affairs) that possesses legal detainment powers and is capable of reimbursing IHS for such service. It should be noted that such agreements relate only to other Federal agencies and not tribal or State agencies.

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- B. The intent of this policy is to encourage the development of service unit policies to protect the health of the community by cooperating with law enforcement officials. However, unless one of the above conditions is met, IHS remains opposed to taking blood samples for alcohol determination solely for law enforcement purposes.
- C. Indian Health Service employees may, nevertheless, be faced with a court order or State law requiring them to draw a blood specimen for determination of its alcohol level. In such cases the IHS employee should contact the Regional Attorney for advice. If the Regional Attorney is unavailable, the employee should comply with the request or order, but, as soon as possible, must advise the Regional Attorney of his/her compliance with the request or order and the surrounding circumstances.
- NOTE: IHS has previously been advised by the Office of General Counsel (OGC) that the risk of tort liability for alleged assault and battery arising out of the taking of blood at an IHS facility incident to a lawful arrest is minimal, regardless of the consent of the individual to the procedure" (OGC Opinion dated 7/13/78). See also the Regional OGC opinion dated July 26, 1989 (attached).
- D. Drawing of blood alcohol samples for medical reasons is not affected by the policy.

2. PROCEDURES

- A. Tribal governments and law enforcement officers requesting such blood alcohol tests shall be informed of the IHS policy.
- B. Area Directors will assure that each service unit develop written procedures governing the drawing of blood alcohol samples consistent with the stated policy. Such procedures would address at least the following items if the drawing of blood alcohol samples is permitted:
- (1) The conditions under which these blood samples can or cannot be drawn. This should address who can make a request and the conditions which must be met before the request will be honored, e.g., lawful arrest, written documents and consent of the individual.
 - (2) Recording of the purpose for which the sample was drawn.
 - (3) Recording of the individual and/or agency requesting the sample and how the chain of custody of the sample will be maintained.
 - (4) How and where records of drawing these samples shall be kept.
 - (5) Any appropriate labeling specifications or procedural guidance, e.g., use of non-alcohol disinfectant.

3. AUTHORITY

The Snyder Act (25 U.S.C. 131, the Transfer Act (42 U.S.C. 20011, the Economy Act (31 U.S.C. 686(2)), and General Counsel Opinion 7/13/78.

4. SUPERSESION

This circular **supersedes** Indian Health Service Circular No. 80-1 dated April 1, 1980.



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